

December 9, 2011



Via ECFS

Vickie Robinson  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: WC Docket 06-122, *Universal Service Contribution Methodology*

Dear Ms. Robinson:

I submit the following comments regarding Universal Service reform, on behalf of myself and my company, ZipDX LLC.

The comments herein are further to those made in our January 2, 2011 letter in this docket. We reiterate our previous advocacy for a contribution methodology:

- Based on “connections” (via wire or over-the-air)
- Linked to bandwidth, capacity, and/or usage but NOT revenue
- Which avoids burdening or exempting any “applications”

Such a methodology would:

- Greatly simplify the system
- Eliminate jurisdictional issues and the “information service” vs. “telecommunications” debate
- Avoid confusion related to bundling
- Likely remain relevant longer without having to adjust regulations for the constant innovation in the services and features that are provided over the physical networks

We also refer you to our November 11, 2010 ex parte meeting with you and Nicholas Degani, where we raised various issues involving establishing jurisdiction and distinguishing information service from telecommunications.

Our comments are particularly relevant in light of the November 3, 2011 FCC WCB Order (DA 11-1841) responding to a request for a review of USAC’s decision concerning MeetingOne’s contribution obligations – an order that frustrates us for several reasons.

ZipDX provides collaboration services which are in some respects similar to those provided by MeetingOne. Thus, we are familiar with the issues raised by MeetingOne and can readily anticipate many more. In this letter, we bring those to your attention in the hope of encouraging you to design the new regulations to avoid the pitfalls exemplified by the current regime. We offer an interim “safe harbor” solution if you cannot quickly implement FUSF contribution reform.

#### **TELECOMMUNICATIONS vs. INFORMATION SERVICES**

The crux of the debate in the recent Order is the classification of the various services provided by a conferencing provider.

The order states:

Like InterCall, MeetingOne’s service allows end users to transmit a call (using telephone lines), to a point specified by the user (the conference bridge)<sup>1</sup>, without change in form or content of the

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<sup>1</sup> As an aside, this phrase suggests that the “call” is between the end user and the BRIDGE, implying that the location of the end user and the location of the bridge are the criteria to be used in determining jurisdiction. Other discussions have suggested that the location of the bridge does not matter, and it is the location of the group of end users in the conference that is relevant. We are left wondering what the “rule” really is.

information as sent and received (voice transmission). Like the audio bridging services at issue in the *InterCall Order*, MeetingOne's services enable end users to access the bridge by dialing a toll-free number, allows the end user to interact with the conference bridge and to participate in a conference call with other callers.<sup>2</sup>

MeetingOne argues that because its service is “IP-based,” and because it does change the form and content of the information it handles, it should be classified as an Information Service. The Order responds:

[T]he Commission found that AT&T's use of IP technology resulted in no net protocol conversion and provided no enhanced functionality to the end user, and therefore the services were properly classified as telecommunications. Similarly, MeetingOne's callers place a call from a traditional phone to a toll-free number; the calls are converted into IP format by MeetingOne's underlying carrier for interaction with MeetingOne's conference bridges, and the calls are converted out of IP and delivered to the other participants on the conference call over the PSTN. MeetingOne's offerings, just like AT&T's service, use IP technology only in the middle of its service, and though routed using different technology than that of a traditional telephone conferencing call, are functionally identical to the services at issue in the *InterCall Order*. We therefore conclude that MeetingOne's use of IP technology warrants the same result - the underlying services constitute assessable telecommunications.<sup>3</sup>

We appreciate that when IP is used as part of the transport of an otherwise “ordinary” telephone call, the service is indistinguishable to the end-user. We have emphasized “without change in form or content” and “provided no enhanced functionality to the end user” because this is where things get more complicated.

In our November 11, 2010 ex parte, we enumerated a number of features and functions which clearly go beyond an “ordinary” telephone call. Some of these are enabled (or facilitated) by our use of IP technology. Many are the subject of issued or pending US patents. Here we recount several examples.

ZipDX has the ability to remove noise and echo from the audio that we receive, and to adjust the gain (volume). We perform “voice activity detection” so that the background audio of non-speaking participants does not obscure or drown out an active talker. These alterations are, in fact, changes to the “content of the information as sent.” If, for example, the original content contained the sound of wind and road noise, or background music, and we removed that, the content has clearly been altered.<sup>4</sup>

We also mentioned transcription, wherein we convert (via either computerized systems or humans) the participants’ audio into text. Clearly we are changing the “form” of the information sent and received. And we now offer a “simultaneous interpretation” service, wherein a participant speaks in one language, and a (human) interpreter simultaneously repeats what was said in another language, to be heard by other participants. In all these cases, our “behind the scenes” activity is leveraging computers and networks and would be virtually impossible in a traditional telephony environment.

MeetingOne offers their “recording” feature as further distinguishing their service, and the Order references the original *InterCall Order* regarding “features”:

[T]he other features offered in conjunction with *InterCall*’s conferencing service, such as muting, recording, erasing, and accessing operator services, do not alter the fundamental character of *InterCall*’s telecommunications offering so that the entire offering becomes an information service. Consistent with the decision in the *Prepaid Calling Card Order*, these separate capabilities are part of

<sup>2</sup> FCC Order 11-1841, paragraph 10.

<sup>3</sup> 11-1841, paragraph 12

<sup>4</sup> We would distinguish our audio functions from, for example, “line echo cancellation” which is routinely performed in many telecommunications networks, the purpose of which is to remove audio artifacts *that are inserted by the network itself*, not to operate on content originated by the end-user.

a package in which the customer can still conduct its conference call with or without accessing these features. These features, therefore, are not sufficiently integrated into the offering to convert the offering into an information service. For these reasons, we find that, in providing its audio bridging service, InterCall is providing telecommunications, and the service is not an information service.<sup>5</sup>

What sort of a “feature,” we wonder, would “alter the fundamental character” of the offering, and be “sufficiently integrated into the offering to convert the offering into an information service”?

ZipDX customers use our unique capabilities to, for example, conduct “focus groups” where one subgroup of participants can “observe” another subgroup: both groups can converse among themselves; the first group can hear the second group’s conversation; but the second group cannot hear the first. This functionality is certainly distinct from traditional phone calls, and distinguishes our service from the “commodity” audio bridging discussed in the InterCall order.

We have customers that insist on absolute security for their conference calls, so we provide them with a suite of access control mechanisms (including caller-ID validation, individual PINs, links to computer-based calendaring systems, and on-line displays and controls).

ZipDX customers use our on-line collaboration tools (“web conferencing”) in conjunction with audio bridging (as do MeetingOne customers). The VON Coalition specifically asked that the Commission address this combination<sup>6</sup>, but we have not been able to find an FCC response to that request.

These ZipDX customers use us SPECIFICALLY because we have these features; they CANNOT conduct their “virtual meetings” to their own standards without them. And that is why some pay us a significant premium over other services that lack these capabilities. In fact, of the total price they pay, well over half of it (per our analysis) is attributable to these “features” while a much smaller fraction goes towards basic bridging. These features cannot be dismissed as “not integrated;” they qualify the service as an Information Service.

MeetingOne suggests the possibility of accessing their conferencing service via SIP, such that a particular meeting participant would connect WITHOUT using the PSTN. The Order responds:

MeetingOne also tries to distinguish its services from those at issue in the *InterCall* Order by arguing that the PSTN is not a necessary component of its audio conferencing technology, stating that its audio bridging services also have the capability of supporting direct session initiation protocol-based (computer-to-computer) connections. MeetingOne, however, admits that it does not yet offer this service. Because MeetingOne does not actually offer computer-to-computer audio conferencing, we decline to address whether this service offering is subject to USF obligations.<sup>7</sup>

ZipDX has been providing SIP-based access since our inception four years ago. We have calls that are “SIP-only” (all participants connected via SIP) and others that are a mix of SIP and PSTN. The fact that the Commission declines to state for the record whether this type of access is subject to USF makes it quite apparent that there is no way that ZipDX could know definitively whether we are correctly reporting our own traffic.

## **PAINFUL UNCERTAINTY**

Without doubt, determining the USF contributions required from Audio Bridging Providers is a challenging process filled with uncertainty. This is painful for everyone involved, but it is a particular burden on small providers that do not have a staff of accountants and regulatory attorneys. These are the providers that are trying the hardest to innovate in the space, and that innovation brings additional uncertainty to our regulatory obligations.

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<sup>5</sup> FCC 08-160 (InterCall Order), paragraph 13

<sup>6</sup> VON Coalition Reply Comments in WC 06-122, 22 June 2010

<sup>7</sup> 11-1841, paragraph 13.

The FCC has been promising to reform the USF contribution methodology since at least 2006. At the beginning of this year, ZipDX submitted suggestions, in line with other industry input, to move to a much simpler system based on “connections.”

If we are going to continue with the present scheme for any length of time, it needs to be made workable in light of the evolution of technology and the introduction of new services. Providers such as ZipDX and MeetingOne shouldn’t be stifled by convoluted regulations.

It seems particularly unfortunate for MeetingOne that they came forward seeking clarification of the “rules” and have effectively been penalized with a ruling forcing them to make retroactive contributions.

ZipDX has been a 499-A filer for some time; we have tried diligently to comply with the rules and have occasionally sought guidance. Still, we aren’t comfortable with the underlying uncertainties (such as those outlined above). In the beginning we were a “de minimus” filer and that gives us “wiggle room.” But it really isn’t fair of the Commission to have us operating in this zone of ambiguity, with the threat that if our best guesses don’t align with yours down the road, we’ll face expensive retroactive consequences.

## WHAT TO DO

If you are not going to quickly (by the end of 2012) implement changes to truly “fix” the contribution methodology, then you need to provide a more workable method to permit those involved with audio bridging to comply with whatever rules you feel are appropriate.

Historically, you have offered various “safe harbors” when the rules have gotten too complex. I would suggest the same here. For “standalone audio bridging providers” (or those that provide a similar function as a component of their overall service), when there is in fact no change to the form or content (making it “telecommunications”; a less-frequent occurrence for ZipDX) allow us to contribute either under the current scheme, or allow us to contribute a fixed fee per minute per connection (the “safe harbor”). You would need to refine that further. If you feel you must retain the “inter-state” jurisdictional classification, then I would propose: “For each minute of each connection where the provider supplies connectivity between a PSTN access point in one state, and the bridge in another state, the provider will report revenue of \$0.02 for the purpose of calculating FUSF contributions.”

This would apply, for example, when a caller in Utah dials a PSTN toll-free access number to reach a bridge in New Jersey, or when a caller in Texas dials a Texas geographic PSTN number to reach a bridge in California, or when a bridge in Florida makes an outbound call to reach a participant in Illinois.

We came up with \$0.02 as the current market volume retail rate for commodity bridging. You could consider adjusting that rate annually as bridging prices continue to fall.

This approach would avoid disputes about “bundling” techniques, giving providers the flexibility to price services to meet the needs of the marketplace without worrying about the FUSF implications. It would avoid disputes about the significance of various added-value features. And it would make clear that connections that do not touch the PSTN are not subject to the fee.

If you don’t like this suggestion, then lets quickly work together to find some other solution.

Regards,



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